

Bail Slip

1.G.Venkatesan,
2.D.Shankar

The above said appellants/Accused (Accused 1 & 2 in S.C.No.236/2010 dated 12/10/2010 on the file of the Addl. Sessions Judge FTC -4, Chennai) were directed to be released on bail as per order of this Court dated 29.12.2010 made in CrI.MP.No.1/2010 in CrI.A.No.809/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

DELIVERED ON : 09.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.809 of 2010

1.G.Venkatesan
2.D.Shankar

.... Appellants

Vs

State Rep. by:-

Inspector of Police,

R-7, K.K.Nagar Police Station,
Chennai.

.... Respondent

(Crime No.603 of 2009)

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence with fine imposed against the appellants/accused on 12.10.2010 in S.C.No.236 of 2010 by the learned Additional District & Sessions Judge, (Fast Track Court-4), Chennai - 600 001 and acquit them from all the charges.

For Appellants : Mr.C.Mohanraj

For Respondent : Mrs.T.P.Savitha
Government Advocate (CrI.Side)

JUDGMENT

This present appeal is filed against the judgment of conviction passed in S.C.No.236 of 2010 on the file of the learned Additional District and Sessions Court (Fast Track Court No-4), Chennai dated 12.10.2010 wherein the Appellant/Accused Nos.1 and 2 were convicted and sentenced in following terms and further the trial Court ordered the Sentence to run concurrently.

Offence	Punishment
Section 341 of IPC	Fine amount of Rs.500/-. Failing to pay fine amount the accused have to undergo one week rigorous imprisonment
Section 294(B) of IPC	Fine amount of Rs.500/-. Failing to pay fine amount the accused have to undergo one week rigorous imprisonment
Section 333 of IPC	2 Years of Rigorous Imprisonment with fine amount Rs.1,000/-. Failing to pay fine amount the accused have to undergo three months rigorous imprisonment

2.The sum and substance of this Appeal as follows:

On 02.09.2009 at about 13.30 hours, when the Government Bus Registration No.TN-01-N-6721 driven by the victim Selvakumar (PW2) from Kumbakonam to Chennai, the 1st Appellant who was driving the TATA van bearing registration No.TN-04-V-2772, had chased the Government Bus and quarreled with the driver of the bus that to drive properly by seeing side mirror. Since the signal was cleared the bus started there and subsequently, when the bus came near Lakshman Shruthi signal at 13.45 hours, the 1st Accused stopped the bus and assaulted the bus driver and scolded in filthy language. In the meantime the other van's driver who is the 2nd Accused had stopped his van and he had joined with 1st Accused and beaten the victim.

3.Thereby accused said to have committed offences, punishable under Sections 341, 294(B), 333 of IPC. Hence the prosecution has filed final report for the above said offences. The trial Court has framed charges under Sections 341, 294(B), 333 of IPC and charges were read over to the accused and explained in Tamil for which the Accused had pleaded not guilty. Thereafter, the trial was conducted by trial Court.

4.On the side of the Prosecution, PWs-1 to 10 were examined. Exhibits-P1 to P10 were marked. On the side of the defense no oral or documentary evidence was exhibited.

5. Upon considering the documents and arguments made on either side, the Trial Court found guilty of the accused and the Appellants (Accused Nos.1 and 2) were convicted and sentenced in the above said terms. As against the same the present Appeal is filed.

6. I heard Mr. C. Mohanraj, learned counsel for the appellants and Mrs. T. P. Savitha, learned Government Advocate for the respondent and perused the entire records. On the perusal of records, it is seen that PW-2 is the victim, PW-1 and PW-2 said to have been eye witnesses.

7. The perusal of records discloses that the evidences of PW-1 and PW-2 are corroborated with each other. PW-3 who said to have witnessed the occurrence turned as hostile, PW-4 who said to have taken the vehicle which was stopped in the middle of the road deposed that he did not know the occurrence and comes under the category of hearsay evidence.

8. PW-5, the doctor who gave the First Aid to victim gave the grievous hurt certificate without seeing the X-ray. PW-6 is the watchman who found the victim sitting on the road allegedly with hurt but turned hostile.

9. PW-7 is the Assistant Engineer in the Transport Corporation treated as hearsay evidence as well as interested witnesses. PWs-8 and 9 are the Mahazar Witnesses who deposed that they did not know the particulars of the papers, it was further deposed that and they signed only on the request made by the respondent and PW-10 the Investigation Officer.

10. It is further seen from the records that the prosecution projected the case as two vehicles involved in the occurrence, but prosecution had seized one vehicle alone. The contention of the delay cannot be taken into consideration as argued by the counsel of the appellants.

11. The learned counsel for the appellants relied on a judgment reported in 2000-2-LW (Criminal) page 861 and advanced his arguments that without seeing X-ray report the doctor certified that the victim sustained grievous injury. The Doctor PW-5 also deposed in the same angle and this Court considers there is force in the argument of appellants.

12.It is seen from the records that there was a quarrel between the victim and the appellants and in sudden provocation the 1st appellant had stopped the bus. The medical evidence is not corroborated with the prosecution case. The version of the PW-1 and 2 are contradicted with other witnesses.

13.This Court is of the view that evidence adduced by the PWs-1 and 2 is unsafe to believe. There is no material to substance the offence under Section 294(b) of IPC. This Court also considers that there are no previous antecedents against the appellant. Hence, this Court has come to conclusion that the prosecution has not proved the case beyond reasonable doubt.

14.In view of the foregoing discussions, this Court set asides the Conviction and Sentence imposed on the appellants in S.C.No.236 of 2010 on the file of the learned Additional District and Sessions Court (Fast Track Court No-4), Chennai dated 12.10.2010 and accordingly present appeal is allowed. The lower Court is directed to refund the fine amount if any deposited by the appellants.

vs

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.The XXIII Metropolitan Magistrate, Saidapet

2.The Chief Metropolitan Magistrate, Egmore

3.The Additional District & Sessions Judge,
(Fast Track Court-4),
Chennai - 600 001.

4.The Principal Sessions Judge, Chennai.

5.The Inspector of Police
R7 K.K.Nagar Police Station, Chennai

6.The Public Prosecutor
High Court, Madras.

KS(CO)

sm:23.11.2018

Criminal Appeal No.809 of 2010